A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM: Hon'ble Shri S.R.Nayak, Chief Justice &
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

W.P.No.2512/2003

PETITIONERS : 1. Coal India Retired Officers' Association Through: Its President, Baldeo Singh, HIG/54, Maharana Pratap Nagar, KORBA (C.G.)
: 2. Baldeo Singh s/o Late S.G. Singh, HIG/54, Maharana Pratap Nagar, KORBA (C.G.)

Versus

RESPONDENTS : 1. Union of India, Through: The Secretary, Ministry of Coal, Shastri Bhavan, New Delhi.
: 2. Coal India Limited, Through: Its Chairman-cum-Managing Director, 10, N.S.Road, Kolkata.
: 3. South Eastern Coalfields Limited, Through: Its Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.)
: 4. The Commissioner, Coal Mines Provident Fund, Dhanbad (Jharkhand)

&

W.P.No.4103/2003

PETITIONER : S.S.Rao, S/o late S.R.Murthy, C/o Shri P.K.Roy, Dipu Para, Near Nalanda School, Bilaspur-495 004

Versus

RESPONDENTS : 1. Union of India, Through: Secretary, Ministry of Coal, New Delhi.
: 2. South Eastern Coalfields Limited, Through: Its Chairman-cum-Managing Director, Seepat Road, Bilaspur-495 001
: 3. Commissioner, Coal Mines Provident Fund, Dhanbad (Jharkhand)

Shri Gary Mukhopadhyay, Counsel for the petitioners.
Shri S.K.Beriwal, Standing Counsel for the Union of India/respondents No. 1. & 4 (W.P.No.2512/2003) & for respondent No.3 (W.P.No.4103/2003)
Shri P.S.Koshy, learned Counsel for the respondents No.2 & 3 (W.P.No.2512/2003) & for respondent No.2 (W.P.No.4103/2003)

ORAL ORDER
(Passed on 19.4.2006)

The following oral order of the Court was passed by S.R. Nayak, C.J.

1. Since the question of law that arises for decision-making in both these writ petitions is identical, these writ petitions were clubbed, heard together and they are being disposed of by this common judgment and order.

2. In these writ petitions, the constitutional validity of the proviso to Paragraph-5 of the Coal Mines Pension Scheme, 1998 (for short, "the Scheme") is assailed. The scheme is framed by the Central Government in exercise of the powers conferred by Section-3E of the Coal Mines Provident Fund and Miscellaneous Provisions Act 1948 (46 of 1948) (for short, "the Act"), in supersession of the Coal Mines Family Pension Scheme, 1971.

3. Paragraph-5 of this Scheme reads as follows:

> "(5)An employee, who was a member of the Central Coalfields Limited Staff Provident Fund, Darbhanga House, Ranchi, hereinafter referred to as CCLSPF, or the Coal Mines Authority Limited Staff Provident Fund constituted under the Coal Mines Nationalization Provident Fund Rules, 1976, hereinafter referred as CMALSPF retired or superannuated on or after first day of April, 1994 or has become the member of Coal Mines Provident Fund, shall be deemed to have become the member of this scheme and eligible to draw pension from the date, following the date of superannuation or retirement in respect of members superannuated or retired on or before 7th October, 2002, and other members as per the provisions of this Scheme from 08th October, 2002:
>
> Provided the employee or the ex-employee or the family (in the event of death of an ex-employee) deposit into the pension fund the arrears, equivalent to the amounts specified in Cl. (b), (C), (d), and (e) and (f), of Paragraph 3, along with interest till the date of deposit from the first day of March, 1971 or the date of joining service, whichever is later, till 07th October, 2002 or the date of superannuation or retirement, as the case may be, by way of authorizing transfer of such amounts from his/her provident fund accumulations, in respect of members who have not withdrawn their Provident Fund

accumulations, and for other member's cases, by way of Demand Draft.

Note: - For the purpose of this paragraph-

(i) A deemed member under this paragraph shall have the option not to join this scheme. For this, he shall inform the Commissioner in writing within one year from the date of publication of this notification. The option once exercised shall be final.

(ii)The amounts specified in Cl. (b) of paragraph-3 shall carry an interest at the rates admissible to Coal Mines Provident Fund members, for Cls. (c) and (d) of paragraph-3 at the rate of 12% per annum and the amounts under Cl. (e) of paragraph-3, at such rate, fixed by the Central Govt. from time to time credited interest in its contributions to the Coal Mines Family Pension Scheme, 1971 till 31-03-1998, and at the rate of 8.5% with effect from 01-04-1998.

(iii)The pensionable service shall be counted in terms of paragraph-2 (O) deeming that they were the members of ceased Coal Mines Family Pension Schme, 1971 or Coal Mines Pension Scheme, 1998, as the case may be, from 01-03-1971 or from the date of joining into CMALSPF or CCLSPF whichever is later till 07th October, 2002 or date of superannuation or retirement, as the case may be.

(iv)In case of any dispute regarding pensionable service, the decision of the Commissioner shall be final.

4. Shri Gary Mukhopadhyay, learned counsel for the petitioners would contend that the conditions imposed under the proviso to paragraph-5 of the Scheme are quite onerous, arbitrary, unreasonable and violative of Article-14 as well as Article-21 of the Constitution. Elaborating the above contention, learned counsel would point out that in terms of the proviso, the petitioners who wish to opt for the pension under the Scheme are required not only to pay their contributions but also the burden imposed on the Government of India and the employer, and therefore, the proviso should be condemned as arbitrary and violative of Article-14 postulates. Learned counsel would alternatively contend that even assuming that the conditions prescribed in the proviso for an employee to opt for the pension under the Scheme could be sustained on the touchstone of Article-14 of the

Constitution of India, even then, the money required to be deposited under the proviso by an employee could be set off against the money payable to such employee if he opts for the pension under the Scheme.

(5) We have heard learned counsel for the respondents also and they supported the impugned provision.

(6) Having heard the learned counsel for the parties, the only question that arises for decision-making is whether the petitioner has made out any ground to declare that the impugned provision of the proviso to paragraph-5 of the Scheme is unconstitutional and invalid.

(7) The impugned provision a piece of delegated legislation made by Central Government in exercise of the power conferred upon it under the Act. It is well settled that the constitutional validity of a delegated legislation could be questioned successfully only on certain grounds such as (i) that the Parent Act is *ultra vires* the Constitution; (ii) that the delegated legislation is *ultra vires* the Constitution; (iii) that the delegated legislation is *ultra vires* Parent Act in the sense that it is in excess of the power conferred by the Parent Act or that it is in conflict with the Parent Act or that it is in conflict with the prescribed procedure of the Parent Act or that it is unreasonable, arbitrary and discriminatory or that it is *mala fide* or that it encroaches upon the rights of the petitioners derived from the common law in the absence of an express authority in the Parent Act or that it conflicts with the terms of some other statute. In this case, none of those grounds are urged to assail the constitutional validity of the impugned delegated legislation except the ground that the conditions imposed under the proviso as conditions precedent for the petitioners to opt for the pension under the Scheme are unreasonable, arbitrary and capricious. In the course of the arguments, we pointedly asked the learned counsel for the petitioner whether, if the petitioners were to comply with the conditions imposed on them in terms of the proviso to paragraph-5, the Govt. of

India would have made any profit or unlawful gain, learned counsel would quite fairly tell us that if the petitioners are enrolled under the Scheme as members, they would receive pecuniary benefit of Rs.2 lakhs and odd whereas the petitioner has to pay only a sum of Rs.1,70,000/- in order to comply with the prescriptions contained in the proviso to paragraph-5. Therefore, it cannot be said that the conditions incorporated in the proviso are unreasonable or arbitrary. In a matter like this, the donee of a statutory of power should be given necessary latitude to frame terms and conditions of the Pension Scheme, and the Court cannot dictate terms of the Schemes and that that that is not its province. The only thing to be seen by the Court is whether the condition that the employee should deposit into the pension fund the arrears, equivalent to the amounts specified in clauses *(b), (c), (d), (e)* and *(f)* of paragraph 3 of the Scheme along with interest could be condemned as irrational and arbitrary.

(8) It is true that Article 14 of the Constitution of India guarantees equality before the law or equal protection of the laws to every person, and, therefore, unreasonableness of administrative rule-making can also be challenged on the ground that it violates Article 14 of the Constitution of India, as held by the Supreme Court and High Courts in number of cases, for example, in **Air India v. Nergesh Meerza**[1], **West Bengal Electricity Board v. Desh Bandhu Gosh**[2], **State of Maharashtra v. Raj Kumar**[3], **Indravadan v. State of Gujarath**[4], **Meenakshi v. University of Delhi**[5] and **Gujarath Universiry v. Rajiv Bhatt**[6]. The Supreme Court having pressed into service Article 14 postulates annulled the delegated legislations impugned before it. But, it needs to be noticed that the Court cannot strike down a delegated legislation on the ground of unreasonableness

1. (1981) 4 SCC 335 = A.I.R. 1981 SC 1829
2. AIR 1985 SC 722 = (1985) 3 SCC 116
3. AIR 1982 SC 785 = (1982) 3 SCC 313
4. 1986 Supp. SCC 254
5. (1989) 3 SCC 709
6. (1996) 4 SCC 60.

merely because, the Court thinks that it goes farther than is necessary or that it does not contain provisions which, in the opinion of the Court, would have been fair. The Courts cannot substitute their wisdom with the wisdom of rule-making authorities. Unless a rule is manifestly unjust, capricious, inequitable or partial in operation, it cannot be invalidated on the ground of unreasonableness or arbitrariness. A responsible administrative authority, in this case, no other than the Central Government entrusted with the power of rule-making must ordinarily be presumed to know what is necessary, reasonable, just and fair. The validity of rules has been judged by generalities of the cases they cover and not by the stray incidences of errors and irregularities discovered or the personal hardship that may ensue by application of rules as highlighted before us by the learned counsel for the petitioners. In other words, the test of reasonableness should be applied in the context of realities of life, as observed by the Supreme Court in **Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupeshkumar Sheth**[7].

(9) In **G.B.Mahajan vs. Jalgaon Municipal Corporation**[8], the Supreme Court held that the test of reasonableness as applied to administrative actions is different from the test as applied in the law of torts or while reviewing administrative action by way of petition under Article 226 of the Constitution of India.

(10) In the result and for the foregoing reasons, we do not find any ground whatsoever to declare the impugned delegated legislation as invalid on any permissible ground.

(11) The writ petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

---

7. AIR 1984 SC 1543 = (1984) 4 SCC-27
8. (1991) 3 SCC-91

Aryaxni